

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL J

KHAREY WISE, et al.

Dkt. No. 03 cv 9974 (DAB)

v.

THE CITY OF NEW YORK, et al.

DOCS # 6

NOTICE OF MOTION

Sirs/Madams:

please take notice that upon the annexed declaration of Lennox S. Hinds, Esq.,

and the exhibit attached thereto, and upon the memorandum of law filed herewith,

Plaintiffs will move this Court, before the Hon. Deborah A. Batts, USDJ, at the

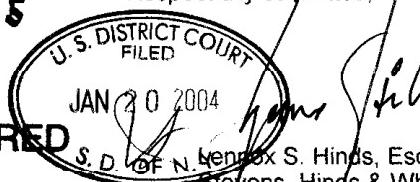
Courthouse, 500 Pearl Street, New York, NY 10007, on January 2, 2004, at 9:00 in the

forenoon or as soon thereafter as counsel can be heard for an Order granting Plaintiffs

leave to serve a late notice of claim with the County of New York.

See N.Y. Gen. Mun. Law § 50-a(7)
and Covington v Westchester County
Jail 1997 WL 580697, * 5

Respectfully submitted,



SO ORDERED

Deborah A. Batts
DEBORAH A. BATTIS 11/16/04
UNITED STATES DISTRICT JUDGE

MICROFILM
8:00 AM
JAN 21 2004

Dated: New York, NY
December 19, 2003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KHAREY WISE, et al.

Dkt. No. 03 cv 9974 (DAB)

v.

THE CITY OF NEW YORK, et al.

DECLARATION

Lennox S. Hinds, Esq. declares under penalties of perjury pursuant to federal law that the facts set forth herein are true to my personal knowledge.

1. I make this declaration in support of Plaintiffs' application for leave to serve a late notice of claim against New York County for the acts of the New York County District Attorney's Office, and its employees, District Attorney Robert Morgenthau, and Assistant District Attorneys Elizabeth Lederer, Tim Clements, and Linda Fairstein.

2. This is an action by Kharey Wise, and members of his family, brought against the police and other officials responsible for the false imprisonment of Kharey Wise for over thirteen years on charges ultimately proven false that he was a participant in the rape of Patricia Meili, known as the Central Park jogger.

3. The New York County District Attorney joined in Kharey Wise's motion to vacate his conviction after the actual perpetrator of the crime confessed to it and provided an account of having acted alone, and after DNA and other evidence corroborated this confession.

4. Each of these individuals and the County District Attorney's office have been named as Defendants in the above-entitled action, based on the knowing extraction

from Kharey Wise of a coerced and false confession which formed the basis of his conviction and imprisonment.

5. These defendants are sued not for actions committed in their absolutely immunized prosecutorial capacities, but for actions in their investigative and administrative capacities.

6. The notice of claim was timely filed against the City of New York on behalf of Plaintiff Kharey Wise and his mother by Plaintiffs' former attorney, within ninety days of the order, and later by leave of the court, on motion, on behalf of his brothers, by the undersigned.

7. However, until a few days ago, Plaintiff's counsel was under the misapprehension that the Notice of Claim already filed sufficed to put the New York County District Attorney's office on notice.

8. Upon reviewing the law, in the course of preparing the complaint for filing, I realized that the New York County District Attorney is an officer of New York County, pursuant to NY County Law § 700, and that therefore a separate notice of claim should be filed with the County.

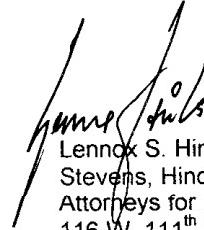
9. The motion which vacated Plaintiff Kharey Wise's conviction was granted on December 19, 2003, so that the service of a late notice of claim upon leave of the Court is still timely under G.M. L. § 50-e (5), as within the one year-ninety day statute of limitations.

10. Defendant New York County, through the District Attorney's office, thoroughly investigated the facts underlying this suit prior to its filing of a response joining in the motion to vacate Kharey Wise's conviction, and is therefore not prejudiced by the delay

in service of the notice of claim.

Wherefore, it is respectfully requested that this Court grant Plaintiff leave to serve a late notice of claim on Defendant County of New York.

Respectfully submitted,



Lennox S. Hinds, Esq.
Stevens, Hinds & White, PC
Attorneys for Plaintiffs
116 W. 111th Street
New York, NY 10026
212 864 4445

Dated: New York, NY
December 19, 2003

Notice of Claim against New York County

To: County of New York
County Clerk
60 Centre Street
New York, NY 10007

New York County District Attorney's Office
1 Hogan Plaza
New York, NY 10007

Claimants:

Kharey Wise
c/o National Action Action
52 East 125th Street
New York N.Y. 10035

Deloris Wise & Daniel Wise
1309 Fifth Avenue
New York, N.Y. 10029

Michael Wise
164-72 West, 141st Street, Apt. 3E
New York, N.Y. 10030

Victor Wise
c/o Michael Wise
164-72 West, 141st Street, Apt. 3E
New York, N.Y. 10030

Claimants' attorneys: Lennox S. Hinds, Esq.
Stevens, Hinds, & White, PC
116 W. 111th Street
New York, NY 10026

Nature of the Claim: False imprisonment, malicious prosecution

Time, place, and manner in which claim arose:

On or about April 20, 1989, inducing false confession by Kharey Wise by coercion, force, and deprivation of rights, utilizing of knowingly false confession to support arrest, conviction, and false imprisonment through 2002, depriving family members of companionship and services of Kharey Wise.

The above acts were done in concert with officers and detectives of the New York City Police Department by Assistant District Attorneys Elizabeth Lederer and Tim Clements, under the supervision of Assistant District Attorney Linda Fairstein, then present, and

Declaration of Service

I, Susan Toussaint declare under penalties of perjury pursuant to federal law that on December 19, 2003, I mailed true copies of the within Notice of Motion and Declaration, and the Memorandum of Law submitted herewith to the Defendants at their respective business addresses by depositing them in postpaid envelopes in mail depositories of the United States Postal Service within the State of New York.



Susan Toussaint